

EXHIBIT 5

HB

109TH CONGRESS
1ST SESSION

H. R. 1038

IN THE SENATE OF THE UNITED STATES

APRIL 20, 2005

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend title 28, United States Code, to allow a judge to whom a case is transferred to retain jurisdiction over certain multidistrict litigation cases for trial, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Multidistrict Litigation
3 Restoration Act of 2005".

4 SEC. 2. MULTIDISTRICT LITIGATION.

5 Section 1407 of title 28, United States Code, is
6 amended—

7 (1) in the third sentence of subsection (a), by
8 inserting "or ordered transferred to the transferee
9 or other district under subsection (i)" after "termi-
10 nated"; and

11 (2) by adding at the end the following new sub-
12 section:

13 "(i)(1) Subject to paragraph (2) and except as pro-
14 vided in subsection (j), any action transferred under this
15 section by the panel may be transferred for trial purposes,
16 by the judge or judges of the transferee district to whom
17 the action was assigned, to the transferee or other district
18 in the interest of justice and for the convenience of the
19 parties and witnesses.

20 "(2) Any action transferred for trial purposes under
21 paragraph (1) shall be remanded by the panel for the de-
22 termination of compensatory damages to the district court
23 from which it was transferred, unless the court to which
24 the action has been transferred for trial purposes also
25 finds, for the convenience of the parties and witnesses and

1 in the interests of justice, that the action should be re-
2 tained for the determination of compensatory damages.”.

3 **SEC. 3. TECHNICAL AMENDMENT TO MULTIPARTY, MULTI-**

4 **FORM TRIAL JURISDICTION ACT OF 2002.**

5 Section 1407 of title 28, United States Code, as
6 amended by section 2 of this Act, is further amended by
7 adding at the end the following:

8 “(j)(1) In actions transferred under this section when
9 jurisdiction is or could have been based, in whole or in
10 part, on section 1369 of this title, the transferee district
11 court may, notwithstanding any other provision of this
12 section, retain actions so transferred for the determination
13 of liability and punitive damages. An action retained for
14 the determination of liability shall be remanded to the dis-
15 trict court from which the action was transferred, or to
16 the State court from which the action was removed, for
17 the determination of damages, other than punitive dam-
18 ages, unless the court finds, for the convenience of parties
19 and witnesses and in the interest of justice, that the action
20 should be retained for the determination of damages.

21 “(2) Any remand under paragraph (1) shall not be
22 effective until 60 days after the transferee court has
23 issued an order determining liability and has certified its
24 intention to remand some or all of the transferred actions
25 for the determination of damages. An appeal with respect

1 to the liability determination and the choice of law deter-
2 mination of the transferee court may be taken during that
3 60-day period to the court of appeals with appellate juris-
4 diction over the transferee court. In the event a party files
5 such an appeal, the remand shall not be effective until the
6 appeal has been finally disposed of. Once the remand has
7 become effective, the liability determination and the choice
8 of law determination shall not be subject to further review
9 by appeal or otherwise.

10 "(3) An appeal with respect to determination of puni-
11 tive damages by the transferee court may be taken, during
12 the 60-day period beginning on the date the order making
13 the determination is issued, to the court of appeals with
14 jurisdiction over the transferee court.

15 "(4) Any decision under this subsection concerning
16 remand for the determination of damages shall not be re-
17 viewable by appeal or otherwise.

18 "(5) Nothing in this subsection shall restrict the au-
19 thority of the transferee court to transfer or dismiss an
20 action on the ground of inconvenient forum.".

21 **SEC. 4. EFFECTIVE DATE.**

22 (a) SECTION 2.—The amendments made by section
23 2 shall apply to any civil action pending on or brought
24 on or after the date of the enactment of this Act.

1 (b) SECTION 3.—The amendment made by section 3
2 shall be effective as if enacted in section 11020(b) of the
3 Multiparty, Multiforum Trial Jurisdiction Act of 2002
4 (Public Law 107-273; 116 Stat. 1826 et seq.).

Passed the House of Representatives April 19, 2005.

Attest: JEFF TRANDAHL,
Clerk.